October 2, 1998

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Member
House Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bliley and Ranking Member Dingell:

I want to thank you for asserting the Commerce Committee's oversight role over the administration of the Medicare home health benefit. As you know, a number of our colleagues have been contacted by constituents and home health agencies over the last several months regarding the Interim Payment System (IPS) being implemented by the Health Care Financing Administration. I understand that the Committee may address this issue in the remaining days of the session. As we prepare to do so, I am writing to ask that any initiative taken by the Committee address the concerns expressed to me by hundreds of Massachusetts seniors and the Home Health Agencies and Visiting Nursing Associations from every city and town in my district.

First and foremost, I believe we must recognize that this is a very emotional issue for individuals and families struggling to cope with the difficulties of aging. And we must also recognize that most of the health professionals performing this work do so honestly, efficiently, and compassionately. For many of them, the IPS has proven to be inequitable and unfair, and we must take steps to reform it.

When Congress passed the Balanced Budget Act of 1997 (BBA) and included a provision to reform the home health benefit, the goal was to weed out inefficient or fraudulent home health agencies. Unfortunately, since the adoption of IPS, the home health industry in Massachusetts has experienced dramatic reductions in and redistribution of payments that have threatened the ability of many reputable home health agencies to be able to provide care. The General Accounting Office noted the following in the conclusions section of its recent report (GAO/HEHS-98-238 Home Health Agency Closures, September 9, 1998): "If however, efficient agencies cannot remain viable under the interim payment system, and high-cost beneficiaries have difficulty obtaining appropriate services, the policies then have had an unintended impact." While this may be an "unintended impact" as described by GAO, I am certain that no Member wants to see high-quality and high-efficiency home health agencies in **all** quarters penalized because of rampant waste, fraud and abuse in **some** quarters.

The Clinton Administration has indicated that it will be unable to implement the Prospective Payment System (PPS) on time, a development which will prolong the utilization of a troublesome IPS, and create more problems for seniors and senior care providers. As the Committee moves forward to address this situation, I ask that you please consider the following suggestions:

1. Eliminate or reduce the 15% cut that is scheduled to automatically take effect in the event that a PPS is not implemented by October 1, 1999.

2. Correct the arbitrary inequity of rewarding and punishing Medicare providers based on the date they came into operation.

3. Eliminate any automatic base-year cuts and the application of the freeze in the calculation of the per beneficiary limit.

4. Raise the per-visit cost limit.

5. Retain Periodic Interim Payments for at least one year after the PPS is implemented.

6. Restrict the pro-rating of the per beneficiary limit to instances where patterns of referral show deliberate gaming; and ensure that any change in the calculation of the per beneficiary limit leaves agencies with the resources they need to provide care to short and long term care patients. An outlier provision would be desirable if calculation adjustments are not made.

7. And finally, clarify the requirement that a home health agency must have a 12-month cost reporting period to qualify as an "old" provider. For the purpose of calculating the per-beneficiary limitation of the IPS, that standard should be met if a 1994 merger with a hospital results in the agency having a blend of two Medicare cost reports for the 12-month period, and retains the same Medicare provider number, employees and location. Such a home health agency should be deemed to have a 12-month cost report for operational year 1994.

I appreciate the difficulty of producing a fair and balanced bill that reflects the many differences in the delivery of home health care throughout the country. I am committed to working with our colleagues on the Committee to crack down on fraudulent and wasteful agencies, while also ensuring that legitimate and efficient home health agencies, including the vast majority of those in Massachusetts, are not forced to close their doors and turn seniors away as a result of an Interim Payment System.

Thank you for considering these suggestions.

Sincerely,

Edward J. Markey